Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Petition for Determination of Effective Competition in 32 Massachusetts Communities and Kauai, HI (HI0011)	)	MB 18-283 CSR-8965-E

CHARTER COMMUNICATIONS, INC.
REPLY TO OPPOSITIONS

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Charter Communications, Inc., on behalf of its subsidiaries and affiliates ("Charter") hereby submits its reply to the oppositions filed by the Massachusetts Department of Telecommunications and Cable ("MDTC") and the State of Hawaii ("Hawaii"), and the comments of the Massachusetts Office of the Attorney General ("Massachusetts AG") (collectively, "Respondents"), in the above-captioned proceeding.[1]

INTRODUCTION AND SUMMARY

Charter's Petition demonstrates that DIRECTV NOW (an AT&T affiliate) offers a comparable video programming service directly to subscribers in areas that substantially overlap with Charter's Franchise Areas in Massachusetts[2] and Hawaii (collectively, the "Franchise Areas").[3] Pursuant to the LEC Test, this showing is sufficient to prove that Charter is subject to

[1] *See* Massachusetts Department of Telecommunications and Cable Opposition to Charter Communications, Inc.'s Petition for Special Relief, MB Docket 18-283, CSR-8965-E (Oct. 25, 2018) ("MDTC Opposition"); Opposition of the State of Hawaii, MB Docket 18-283, CSR-8965-E (Oct. 25, 2018) ("Hawaii Opposition"); Comments of the Office of the Attorney General for the Commonwealth of Massachusetts, MB Docket 18-283, CSR-8965-E (Oct. 25, 2018) ("Massachusetts AG Opposition").

[2] *See* Appendix A.

[3] *See* 47 U.S.C. § 543(*l*)(1)(D).

effective competition in Massachusetts and Hawaii. In enacting the LEC Test, Congress recognized that LECs were uniquely well-funded and well-established entities that would provide durable competition to cable. Accordingly, it determined that a LEC's offering of video programming services "by any means," rather than solely as a multichannel video programming distributor ("MVPD"), warrants the deregulation of cable rates in order to enable incumbent cable operators to compete fully and fairly against LEC video providers.[4] A finding that DIRECTV NOW satisfies the LEC Test is fully consistent with this objective, and it comports with the realities of today's marketplace, where LECs and LEC affiliates can (and in the case of AT&T, do) compete with incumbent cable operators by offering online video programming services like DIRECTV NOW.

Unable to dispute the facts set forth in Charter's Petition, Respondents read into the LEC Test a highly restrictive "facilities" requirement that is inconsistent with the statute, the Commission's precedent, and the policy goals underlying the LEC Test. They argue that a LEC must be an MVPD to satisfy the LEC Test and that, if DIRECTV NOW meets the test, it must also be an MVPD that requires a cable franchise. But because the LEC Test pointedly does *not* require a LEC or LEC affiliate to provide video programming as an MVPD, the Commission need not decide whether an online video distributor like DIRECTV NOW is an MVPD. All that is required under the LEC Test is for AT&T to offer comparable video programming service directly to subscribers in Massachusetts and Hawaii. As demonstrated below, DIRECTV NOW meets that requirement.

[4] *See In re Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, Report and Order, 14 FCC Rcd 5296, 5301-02 ¶ 9 (1999) ("*1999 Implementation Order*").

In support of their novel contention that the LEC Test includes a "facilities" requirement, Respondents advance two arguments, neither of which withstands scrutiny. First, despite the undisputed fact that DIRECTV NOW offers a channel lineup with a *minimum* of 65 different video programming channels in the Franchise Areas, Respondents argue that DIRECTV NOW does not offer "at least 12 channels of video programming," as the Commission's rules require. Respondents claim that the reference to "channels" in the regulatory definition of "comparable" video programming service[5] must mean physical channels as defined in Section 602 of the Cable Act.[6] But while Section 602 informs the references to "channel" where the term is used in the Cable Act, Respondents' attempt to import it into the LEC Test directly conflicts with the statutory language of the test. The LEC Test nowhere mentions "channels"; rather, it states explicitly that a competing service may be provided "*by any means* (other than direct-to-home satellite service)."[7] Respondents conveniently ignore this language. In adopting its definition of comparable programming, the Commission itself explained the reference to channels to mean simply "programming sources" rather than physical channels. None of the Commission's prior determinations implementing or applying the LEC Test have held otherwise, and the Commission has wide latitude to adopt a definition of "channel" for purposes of its comparability rule that is most appropriate for the context and objectives of the rule.

Second, Respondents assert that DIRECTV NOW is not "offer[ed]" "directly to subscribers" in the Franchise Areas because AT&T's facilities are not physically located in these areas. Like Respondents' other attempt to create a facilities requirement from whole cloth, this

[5] 47 C.F.R. § 76.905(g).

[6] 47 U.S.C. §522(4).

[7] *See* 47 U.S.C. § 543(*l*)(1)(D).

argument fails. There is no dispute that DIRECTV NOW provides video service to subscribers in the Franchise Areas over broadband and wireless networks, and that internet access is widely available in these areas.[8] The suggestion that DIRECTV NOW is *unable* to "physically . . . deliver service to potential subscribers" is belied by the nearly two million subscribers to whom it already delivers service. Respondents offer no authority for their counterfactual attempt to transform this provision into a mandate about the location of AT&T's physical facilities. Nothing in the statute, the Commission's rules, or its precedents supports a finding that Congress silently intended to constrain the meaning of "offer[ing]" service.

Finally, Respondents' interpretation of the LEC Test is at odds with the purpose and objectives of the statute: promoting fair and effective competition by eliminating cumbersome rate regulations where Congress has found them to be unnecessary. In adopting the LEC Test, Congress recognized the unique market power of LECs and LEC affiliates and sought to avoid the imposition of asymmetrical regulation that would prevent cable operators from fairly competing against these entities. There is no doubt that online video services like DIRECTV NOW can and do compete with cable services. When offered by a LEC or LEC affiliate, such services meet the LEC Test.

The broad wording of the LEC Test gives the Commission flexibility to continue pursuing the objectives of the effective competition exception "as industry technology evolves."[9] Respondents ask the Commission to put its head in the sand and ignore not only the language and intention of the law, but also today's marketplace reality. The Commission should reject this invitation and grant Charter's Petition.

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[8] *See infra* at III.

[9] *Cablevision Sys. Corp. v. FCC*, 649 F.3d 695, 707 (D.C. Cir. 2011); *see also Massachusetts v. EPA*, 549 U.S. 497, 531-32 (2007); *United States v. Sw. Cable Co.*, 392 U.S. 157, 173-74 (1968).

DISCUSSION

I. DIRECTV NOW Is a Video Programming Service That Is "Comparable" to Charter's Cable Service.

To satisfy the LEC Test, a LEC or LEC affiliate must offer "video programming service" that is "comparable" to the petitioning cable operator's service.[10] To be comparable, a service must offer "at least 12 channels of video programming, including at least one channel of non-broadcast service programming."[11] By providing the Commission with DIRECTV NOW's channel lineups, which demonstrate that its subscribers are able to access a *minimum* of 65 different channels of non-broadcast video programming in the Franchise Areas, Charter has shown that DIRECTV NOW is "comparable" to Charter's cable service.[12]

Unable to deny that DIRECTV NOW offers dozens of channels of programming in the Franchise Areas, MDTC argues that the reference to "channels" in the Commission's comparability test incorporates the definition of "channel" found in Section 602 of the Cable Act.[13] Because the statutory definition of "channel" requires a physical transmission path in a cable system,[14] MDTC asserts that the LEC Test requires the LEC or LEC affiliate to use its own physical facilities to provide the video programming service.[15]

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[10] 47 U.S.C. § 543(*l*)(1)(D).

[11] 47 C.F.R. § 76.905(g); *1999 Implementation Order*, 14 FCC Rcd at 5306-07 ¶ 15 (citing *In re Implementation of Section of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation*, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5666-67 ¶ 38 (1993) (*Cable Reform Order*)).

[12] 47 U.S.C. § 543(*l*)(1)(D); Petition of Charter Communications, Inc. for Determination of Effective Competition, MB 18-283, at 11-12 (Sept. 14, 2018) ("Pet.") (noting that the Media Bureau frequently permits parties to satisfy this showing by attaching copies of channel line-ups to their petition).

[13] *See* 47 U.S.C. §522(4) (defining channels as "a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel").

[14] MDTC Opposition at 5.

[15] *See Id*. at 4-9.

The Commission should reject Respondents' convoluted attempt to import the statutory definition of channel into the LEC Test. Respondents' strained interpretation of "channels" would add a requirement to the LEC Test that Congress did not include and that cannot be reconciled with the Commission's prior application of that test.

First, the word "channel" appears nowhere in the statutory text of the LEC Test itself. Although the provision of physical channels is *one* way of delivering video service, MDTC is wrong that this is the *only* means that the LEC Test countenances. In explicitly providing that the LEC Test can be satisfied by offering video programming services "by any means," Congress went out of its way to exclude one—and only one—such means of delivery: direct-to-home satellite.[16] If Congress had wanted to limit the reach of the LEC Test further, it would have done so.[17]

Second, there is no basis for MDTC's claim that the statutory definition of channel controls the Commission's definition of comparable service. In fact, MDTC's conclusory assertion that the statutory definition applies here finds no support whatsoever in the Commission's previous interpretations of the "comparable programming" requirement. To the contrary, in adopting the comparable programming definition, the Commission indicated that channels refer to "programming sources" rather than physical channels.[18] The Commission has since interpreted

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[16] 47 U.S.C. § 543(*l*)(1)(D).

[17] *See EchoStar Satellite LLC v. FCC*, 704 F.3d 992, 999 & n.5 (D.C. Cir. 2013) (applying the canon of *expressio unius est exclusio alterius*, the canon that "to express or include one thing implies the exclusion of the other," to the interpretation of section 629 of the Communications Act). Hawaii argues that Congress intended the phrase "by any means" to encompass only facilities-based methods of delivery because it explicitly referred to "MMDS, LMDS, an open video system, or a cable system" in the legislative history. Hawaii Opposition at 4 (quoting S. Rep. No. 104-230 at 170 (1996) (Conf. Rep.) ("Conference Report")). That is simply mistaken. The Conference Report states clearly that Congress intended "by any means" to include "any medium" including those facilities-based means of delivering video programming. Conference Report at 170. Those examples were illustrative but not exhaustive; Congress gave no indication that it intended "by any means" to cover only those media.

[18] *See Cable Reform Order*, 8 FCC Rcd at 5667 ¶ 38 n.130 ("With respect to switched networks, we construe comparability to mean at least twelve different programming sources.").

the requirement to offer comparable video services on at least three occasions, and none of these decisions suggested or invoked the statutory definition of "channel" for these purposes.[19]

The fact that Section 602 contains a definition of "channel" does not compel the Commission to apply the identical definition in the context of the LEC Test.[20] Both the Commission and the courts have recognized the Commission's authority to apply the same term differently in different statutory contexts.[21] That context-sensitive flexibility is particularly appropriate here, where the statutorily-defined term ("channel") is not even used in the statutory text of the LEC Test, and thus in no way limits the Commission's ability to fashion a more general and non-technical definition of that term for purposes of the comparability test. The Commission's non-technical use of "channels" is also evident in its prior decision regarding AT&T's U-Verse video programming service; the Commission held that this service satisfies the LEC Test, even though AT&T arguably provides only a single physical "channel" to U-Verse customers under the

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[19] *See Cable Rate Order*, 8 FCC Rcd at 5666-67 ¶ 38 (1993); *In re Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, Order and Notice of Proposed Rulemaking, 11 FCC Rcd 5937, 5942 ¶ 11 (1996) ("*1996 Implementation Order*"); *1999 Implementation Order*, 14 FCC Rcd at 5306-09 ¶¶ 16-22 (1999).

[20] Other provisions of the Commission's rules use the term "channel" in a non-technical sense to include programming networks. *See* 47 C.F.R. § 79.1(d)(11) ("No video programming provider shall be required to expend any money to caption any video programming if such expenditure would exceed 2 percent of the gross revenues received *from that channel* during the previous calendar year." (emphasis added)). A "video programming provider" for these purposes includes not only video distributors, but also "any other entity that provides video programming" that is not a distributor and therefore clearly does not offer a transmission path. *See id.* § 79.1(13).

[21] *See In re Anglers for Christ Ministries, Inc.*, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, 26 FCC Rcd 14,941, 14,960 ¶ 36 n.123 (2011); *In re Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14,989, 14,998-15,001, ¶¶ 16-23 (2005) (interpreting "information services" in the Communications Assistance for Law Enforcement Act differently from the interpretation of the similarly defined term in the Communications Act), *aff'd sub nom. Am. Council on Educ. v. FCC*, 451 F.3d 226, 232-33 (D.C. Cir. 2006) (noting that the Commission's "interpretation of CALEA reasonably differs from its interpretation of the 1996 Act, given the differences between the two statutes"); *U.S. West Commc'ns, Inc. v. FCC*, 177 F.3d 1058, 1059-60 (D.C. Cir. 1999) (holding that the term "provide" can bear different meanings under the Communications Act depending on the statutory context).

statutory definition of that term.[22] The Commission's interpretation of its own rules is entitled to considerable deference.[23]

This more general definition of "channels" is also the most logical meaning in the context of deciding whether a LEC or LEC affiliate is providing video programming services that are comparable to and compete with cable service. The comparability test is designed to ensure that a LEC-affiliated service provides a sufficient aggregation of video programming to give consumers a meaningful alternative to their local cable provider. That objective is best satisfied by interpreting "channels" in a way that equates the term to programming sources.

Once it is clear that the LEC Test does not implicate the statutory definition of "channel,"[24] it is also clear that the fact that DIRECTV NOW offers channels of video programming for purposes of the comparability test does not convert DIRECTV NOW (or AT&T) into a cable service or cable operator requiring a cable franchise.[25] Nor does the Commission need to address

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[22] *See, e.g.*, *In re Time Warner Cable, Inc., Petitions for Determination of Effective Competition in Communities in Wisconsin*, Memorandum Opinion and Order, 31 FCC Rcd 3400, 3401 ¶ 4 (MB 2016); *In re Bright House Networks, LLC Petition for Determination of Effective Competition in Farmington, Michigan*, Memorandum Opinion & Order, 26 FCC Rcd 7662, 7662-64 ¶ ¶ 1-5 (MB 2011).

[23] *See Talk Am., Inc. v. Mich. Bell Tel. Co.,* 564 U.S. 50, 59 (2011) (an agency's interpretation of its own regulations is entitled to deference unless it is plainly erroneous or inconsistent with the regulation or there is reason to suspect that the interpretation does not reflect the agency's fair and considered judgment); *Auer v. Robbins*, 519 U.S. 452, 461 (1997); *In re Mr. Richard Jackowitz IT Connect, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 7896, 7901 ¶ 10 n.46 (2012).

[24] For this reason, MDTC's reference to the Media Bureau's tentative conclusion in the *Sky Angel* proceeding is wholly inapposite. MDTC Opposition at 6-7 (citing *Sky Angel U.S., LLC*, Order, 25 FCC Rcd 3879, 3882-83 (MB 2010)). *Sky Angel* presented the question of whether an online video distributor met the statutory definition of MVPD. Because that definition includes a reference to channel, the statutory definition of channel was directly applicable. By contrast, as explained above, the LEC Test includes no reference to channel.

[25] MDTC contends that if DIRECTV NOW were held to satisfy the LEC Test, AT&T would thereby become a cable operator subject to the requirements of Title VI pursuant to Section 651(a)(3) of the Cable Act. MDTC Opposition at 23-25. Like the rest of MDTC's opposition, this argument appears to be based on the faulty premises that in order for DIRECTV NOW to meet the LEC Test, AT&T must be a LEC in the Franchise Areas and provide the physical connection between DIRECTV NOW and its subscribers. As demonstrated above, neither of these premises is correct, and thus MDTC's contention regarding the applicability of Title VI fails. Nothing in Section 651 suggests that a common carrier or its affiliate would be subject to the Cable Act unless it meets the prerequisites of Title VI, *i.e.*, unless it is a cable operator offering cable service over a cable system. MDTC itself admits as much. *See* MDTC Opposition at 23 (cable franchising requirements apply to common

the question of whether DIRECTV NOW is an MVPD in order to find that DIRECTV NOW meets the LEC Test.[26] If Respondents were correct that a LEC affiliate must provide physical channels, the LEC Test would be limited to MVPDs. But once again, Respondents seek to read into the statute a requirement—here, that the LEC must be an MVPD—that Congress explicitly did not include.[27] Indeed, Congress went out of its way to make the LEC Test different from the other effective competition tests in that regard: while all three of the other tests explicitly require that the competitive provider be an MVPD,[28] the LEC Test instead requires only that the LEC or LEC affiliate offer "video programming services" "by any means."[29] Respondents' manufactured limitations on the means by which a LEC's competing video programming service may be provided contradicts Congress's direction that the LEC Test may be satisfied by *any* means.

carriers "only when they act as cable operators providing cable service"). MDTC provides no factual or legal basis for its vague assertion that AT&T is a cable operator in the Franchise Areas, and the offering of DIRECTV NOW there does not somehow "inherently" subject AT&T to Title VI. MDTC claims that the Commission "would have to find" that AT&T is a "common carrier of local exchange service" in order to grant Charter's Petition, and that the grant of the Petition would somehow "deem[]" AT&T to be providing DIRECTV NOW over a cable system. MDTC Opposition at 24. As explained above, however, the LEC Test can be satisfied by a LEC "or its affiliate" "by any means," and is not limited to LECs acting as cable operators or any other MVPD. MDTC's argument regarding the applicability of Title VI relies on the same fundamental misunderstanding of the LEC Test as the rest of its opposition and should therefore be dismissed.

[26] MDTC raises the specter that granting the petition would require the Commission to find that DIRECTV NOW makes available "channels" of programming as that term is defined in the statute, and is thus an MVPD. MDTC Opposition at 9. But while MDTC appears to regard this argument as a "gotcha," *see* MDTC Opposition at 7-8, it is in fact a *non sequitur* for the reasons discussed above: DIRECTV NOW's comparable channels need not be physical channels, and Congress explicitly did not require LEC or LEC-affiliated video programming services to qualify as MVPDs to meet the LEC Test.

[27] Where Congress wishes to impose requirements on MVPDs, it does so specifically. *See, e.g.*, 47 U.S.C. § 536.

[28] *See* Low Penetration Effective Competition Test ((47 U.S.C. § 543(*l*)(1)(A); (47 C.F.R. § 76.905(b)(1)); Competing Provider Effective Competition Test ((47 U.S.C. § 543(*l*)(1)(B); (47 C.F.R. § 76.905(b)(2)); Municipal Provider Effective Competition Test ((47 U.S.C. § 543(*l*)(1)(C); ((47 C.F.R. § 76.905(b)(3)).

[29] 47 U.S.C. § 543(*l*)(1)(D).

II. DIRECTV NOW Offers Its Video Programming Service Directly to Subscribers in the Franchise Areas.

The fact that nearly two million subscribers already use DIRECTV NOW[30] and that internet service is now ubiquitous in the Franchise Areas[31] leaves no question that DIRECTV NOW offers its video service directly to subscribers. Nonetheless, Respondents maintain that DIRECTV NOW is not "physically able" to deliver service within the meaning of the statute and, remarkably, that DIRECTV NOW is not "actually available" in the Franchise Areas.[32] In a further attempt to import a facilities requirement into the LEC Test, Respondents contend that DIRECTV does not "offer" DIRECTV NOW "directly to subscribers" because it offers the service over third-party broadband networks, rather than through its own facilities in the Franchise Areas.[33] Respondents not only assert an argument that is contrary to the statutory text allowing transmission "by any means," but they also ask the Commission to ignore the obvious. By any reasonable standard, DIRECTV NOW is both physically able to deliver its programming to subscribers and actually available in the Franchise Areas.

A. DIRECTV "Offers" DIRECTV NOW in the Franchise Areas.

Respondents misconstrue the Commission's definition of the word "offer." Noting that the regulations define "offer" as "physically able to deliver the service to potential subscribers with no or only minimal additional investment by the provider," Respondents ask the Commission to leap from that definition to the much different conclusion that a LEC affiliate must deliver its

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[30] Daniel Frankel, *DIRECTV NOW Pacing to Surpass Sling TV in Subscribers by End of Year*, Multichannel News (Aug. 8, 2018), https://www.multichannel.com/news/DIRECTV-NOWpacing-to-surpass-sling-tv-in-subscribers-by-end-of-year ("Frankel") (reporting that DIRECTV NOW has acquired 1.81 million subscribers nationwide); MDTC Opposition at 11-13, 16; Hawaii Opposition at 4.

[31] *See infra* at III.

[32] MDTC Opposition at 12-13.

[33] 47 U.S.C. § 543(*l*)(1)(D); MDTC Opposition at 11-13; Hawaii Opposition at 4.

service through its own physical facilities in the franchise area.[34] Specifically, MDTC argues that "the Commission clearly requires a LEC to have and provide a physical connection, whether by wire or spectrum, the entire way to the subscribing household."[35]

MDTC does not cite any relevant authority in support of this blanket assertion, and neither the statute nor the Commission's rules require a LEC affiliate to own the facilities used to deliver service or rely solely on LEC-owned facilities. As Charter has explained, Congress explicitly provided that the LEC Test could be satisfied "by any means" of offering video programming service. It expressly excluded one, and only one, such means: direct-to-home satellite.[36] Aside from this one limitation, Congress explained, it meant to "include[] *any* medium . . . for the delivery of comparable programming."[37] Congress did *not* say that the LEC Test excludes the provision of video programming services via non-LEC facilities,[38] or the provision of video programming

[34] MDTC Opposition at 11.

[35] MDTC Opposition at 12, 16. It is not entirely clear whether Respondents' position is that DIRECTV is not "physically able" to deliver its service because broadband networks are not a means of delivering video programming or because DIRECTV does not own those broadband networks. In either case, this argument lacks any grounding in the statute.

[36] 47 U.S.C. § 543(*l*)(1)(D).

[37] Conference Report at 170 (emphasis added).

[38] In fact, when the Commission first considered the "offer" requirement in the context of the LEC Test, its interim order concluded that MMDS satisfied the requirement even when the broadcast signals were not carried over MMDS licensed facilities but instead through off-air reception accessed through an A/B switch (provided by the LEC or affiliate), thereby recognizing that comparable video programming did not need to be offered over the LEC's own facilities. *1996 Implementation Order*, 11 FCC Rcd at 5943 ¶ 14.

services online.[39] MDTC does not and cannot seriously contend with this statutory language or defend its attempt to conjure a facilities requirement out of thin air.[40]

There are numerous examples of providers that are "physically able to deliver service" without owning an unmediated, physical connection to their subscribers. Broadband and wireless networks are just as capable of delivering video programming as a cable system or multichannel multipoint distribution service ("MMDS"). As noted above, DIRECTV NOW itself has acquired nearly two million *actual* subscribers nationwide.[41] It would take an excessively scholastic interpretation of "physically able to deliver" to conclude that, despite having nearly two million subscribers, DIRECTV NOW is nevertheless not "physically able to deliver" its service to those subscribers. Respondents' position asks the Commission to ignore the realities of the market for

[39] While online video programming was not yet viable when the LEC Test was adopted, *see In re Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, Fourth Annual Report, 13 FCC Rcd 1034, 1042 (1998) ("[d]ue to bandwidth and other limitations, this method of video distributions does not yet produce programming that is comparable in length, quality, or convenience to broadcast video"), the broad "by any means" test was a forward-looking standard that encompassed such future marketplace developments.

[40] Hawaii contends that the House and Senate versions of what became the Telecommunications Act support its facilities-based reading of the LEC Test, Hawaii Opposition at 3-4, but in fact the legislative history undermines its argument. The Senate version would have applied the LEC Test to services provided "either over a common carrier video platform or as a cable operator," while the House version would have applied the test to LECs that provide a "video dialtone service" or have a franchise for a cable system. *See* S. 652 as passed by the Senate, June 15, 1995, § 203(b)(2) (104th Congress); S. 652 as passed by the House of Representatives, with Amendments, October 12, 1995, § 202(h) (104th Congress). But as Hawaii admits, these limitations did not make it into the final version of the LEC Test, which broadly applies to services provided "by any means," excluding only direct-to-home satellite services. Hawaii argues that "by any means" should be construed to mean only the specific examples listed in the Conference Report, but those examples are explicitly non-exclusive. *See* Conference Report at 170 (104th Congress) ("'By any means,' includes *any medium* (other than direct-to-home satellite services) . . . , including MMDS," etc. (emphasis added)). The far more plausible inference to draw from the substitution of the unfettered "by any means" in the enacted law is that Congress chose not to impose any limitations on the LEC Test other than the specifically-enumerated one for direct-to-home satellite.

[41] *See* Frankel, *supra* n.30.

video programming services, in which consumers can *and do* access video programming online, just as they can through their cable connection or through MMDS.[42]

B. DIRECTV Offers DIRECTV NOW "Directly to Subscribers."

Respondents also misconstrue the requirement that a LEC affiliate offer its service "directly to subscribers."[43] They argue, incorrectly, that DIRECTV NOW is not provided "directly to subscribers" because it is offered over the internet and AT&T does not provide broadband service in the Franchise Areas.[44] As a result, Respondents argue, DIRECTV NOW is only provided "indirectly" to subscribers.[45] MDTC also argues that, in order to satisfy the LEC Test, the competing service must be delivered through a LEC-owned cable system, and thus that DIRECTV NOW fails on this basis.[46]

As an initial matter, Respondents are wrong on the facts. AT&T provides wireless broadband service in both Massachusetts and Kauai,[47] and DIRECTV NOW can be accessed over any wireless broadband connection, including AT&T's.[48] Accordingly, AT&T offers DIRECTV NOW "directly to subscribers" in the Franchise Areas even under Respondents' (incorrect) reading of the statute.[49]

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[42] *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighteenth Report, 32 FCC Rcd 568, 571 ¶ 8 (MB 2017) (*2017 Video Competition Report*).

[43] MDTC Opposition at 16.

[44] *Id*. at 16.

[45] *Id.*; Hawaii Opposition at 4-5.

[46] MDTC Opposition at 23-24.

[47] *See* AT&T, "AT&T Maps" https://www.att.com/maps/wireless-coverage.html.

[48] *See* DIRECTV NOW, "DIRECTV Now Terms of Service and End User License Agreement," https://www.directvnow.com/terms-and-conditions.

[49] This does not make DIRECTV NOW a cable service, or AT&T Mobility a cable operator since, among other reasons, wireless broadband service is not provided over a "closed transmission path[]." *Cf.* 47 U.S.C. § 522(7) (defining cable system). DIRECTV NOW remains an online video distributor and AT&T a mobile broadband provider, even when AT&T's wireless customers use their AT&T broadband connection to access DIRECTV

Respondents are also wrong in their interpretation of the statutory text. The requirement that a LEC affiliate offer service "directly to subscribers" is nothing more than a requirement that the LEC affiliate must have (or offer to have) a direct customer relationship with consumers in the franchise area.[50] Congress included this requirement to avoid deregulating incumbent cable providers in situations where a LEC or LEC affiliate had no customers for its video programming in the franchise area but had become involved only indirectly with a competitor service. For example, if a LEC or LEC affiliate had made only minor investments in a competitor service or had simply supplied programming for that service, such involvement would not satisfy the LEC Test for effective competition.[51] By contrast, DIRECTV NOW's relationship with its customers is unmediated. AT&T markets DIRECTV NOW directly to customers, customers subscribe to

NOW. *See 2017 Video Competition Report*, 32 FCC Rcd at 571 ¶ 8 (classifying DIRECTV NOW as an online video distributor).

[50] Respondents' argument that the LEC must furnish the connection to the home as well as the programming service in order to qualify as offering the service "directly to subscribers" is like saying that J. Crew does not offer its products directly to customers because the goods were ultimately delivered by UPS or FedEx rather than trucks operated by J. Crew.

[51] Former Section 613(b) of the Cable Act also referred to the provision of video programming "directly to subscribers," prohibiting LECs from engaging in this activity in their telephone service area. *See In re Telephone Company-Cable Television Cross-Ownership Rule, Sections 63.54-63.58*, Third Report and Order, 10 FCC Rcd 7887, 7887 ¶ 1 (1995). While the prohibition was repealed in 1996, the interpretation of this phrase by the Commission and the courts is instructive. As the Commission explained, the provision of programming "directly to subscribers" meant "selecting (or 'exerting editorial control over') and providing the video programming …," but it did not mean "acting as a conduit to carry video programming selected and provided by an unaffiliated party." *Id*. at 7887 ¶ 2; *see also Chesapeake and Potomac Telephone Co. of Va. v. United States*, 42 F.3d 181, 185, 189 (4th Cir. 1994) (providing directly to subscribers meant "offering, with editorial control, cable television services to their common carrier subscribers," but not the transmission of the video programming of unaffiliated cable operators), *vacated as moot*, 516 U.S. 415 (1996). In other words, providing video programming "directly to subscribers" entailed the selection and provision of programming to customers and not, as Respondents would have it, the provision of a physical connection. Additionally, in the 2010 amendments to the closed captioning statute, Congress expressly recognized that online video programming can be offered "directly" to end users. *See* 47 U.S.C. § 613(c)(2)(D)(iii) (directing the Commission to "clarify that . . . the terms 'video programming distributors' and 'video programming providers' include an entity *that makes available directly to the end user* video programming *through a distribution method that uses Internet protocol*" (emphasis added)).

DIRECTV NOW (not a third party service), DIRECTV bills subscriber for this service, and customers remit payment directly to DIRECTV.[52]

Properly understood, the "directly to subscribers" requirement stands to reason. Congress enacted the LEC Test because it recognized that LECs and their affiliates have unique market power and can therefore offer substantial competition to incumbent cable operators.[53] But when LECs or LEC affiliates are not actually in the business of acquiring subscribers for their own video programming services in a franchise area, their unique competitive advantages are not implicated (or are at least significantly less compelling). The requirement for LECs or LEC affiliates to have a "direct" relationship with subscribers in a franchise area ensures that the LEC Test applies only when incumbent cable operators face competition from LECs or LEC affiliates in the video distribution marketplace.

Respondents offer no relevant authority in support of their strained interpretation of the statute. MDTC's citation to *FilmOn X* does not establish that DIRECTV NOW transmits video signals only to internet service providers and not "directly to subscribers" within the meaning of the LEC Test. That decision, which was based on the district court's interpretation of specific provisions of the Copyright Act, has no bearing on whether a video programming service provided

[52] MDTC cites Congress's use of the phrase "directly or through an affiliate" in Section 623(m)(2) of the Cable Act, apparently as evidence that providing video programming services "directly" to subscribers means providing that program using a LEC-owned physical connection. MDTC Opposition at 19. The relevance of Section 623(m)(2) to the LEC Test is dubious at best, but if anything it supports Charter's Petition. Section 623(m)(2) defines "small cable operator" to mean an operator that "directly or through an affiliate" serves less than 1 percent of all subscribers in the United States and satisfies certain other criteria. 47 U.S.C. § 543(m)(2). "Directly" in this provision refers to the business relationship between the provider and its subscribers, not the facilities used to deliver service. A business relationship can be "direct," *i.e.*, with the cable operator itself, or established with an affiliate. The same is true under the LEC Test.

[53] 141 Cong. Rec. S8243 (daily ed. June 13, 1995) (statement of Sen. Pressler) (citing the particular challenge posed by LECs in the market for video programming); *Cable Reform Order*, 14 FCC Rcd at 5,301 ¶ 9 & n.38.

over broadband offers services "directly to subscribers" for the purposes of the LEC Test.[54] Not surprisingly, these entirely distinct statutory contexts include countless differences that are significant to the interpretation of this phrase. For instance, unlike the LEC Test, the definition of "cable system" found in the Copyright Act does not specify that it applies to the provision of services "by any means."[55]

C. DIRECTV Is a LEC Affiliate Regardless of Where AT&T Offers Telephone Exchange Service.

MDTC's assertion that AT&T does not provide local exchange services in the Franchise Areas is of no moment.[56] By its terms, the LEC Test applies to any LEC affiliate offering comparable video programming services in the cable operator's franchise area.[57] The fact that the LEC Test can be satisfied by a LEC *affiliate*—not just the LEC itself—strongly indicates that the application of the LEC Test is *not* limited to the geographic areas where the LEC provides

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[54] *Fox Television Stations, Inc. v. FilmOn X, LLC*, 150 F. Supp. 3d 1, 19 (D.D.C. 2015). The issue in *FilmOn X* was whether an online service that captured and rebroadcast over-the-air programming was a "cable system" entitled to a statutory license *under the Copyright Act*, which defined "cable system" to mean "a facility" that makes secondary transmissions of programming "by wires, cables, microwave, or other communications channels … to subscribing members of the public who pay for such service." *Id.* at 6-7, 18 (quotation marks omitted). The district court's decision that the online service without physical facilities was not a cable system was *explicitly* grounded in and limited to the specific provisions of the Copyright Act at issue. *Id.*; 17 U.S.C. § 111(f)(3).

[55] Conference Report at 170 (explaining that "[b]y any means" includes offering of video programming "in any medium"). And at any rate, the Ninth Circuit has disagreed with the district court's reasoning on this point, holding that nothing in the relevant statute's definition of "cable system" "compels the conclusion that the facility must *control* the retransmission medium—the wires, cables, microwaves, or other communications channels—that it relies on to deliver its retransmissions." *Fox Television Stations, Inc. v. Aereokiller, LLC*, 851 F.3d 1002, 1008 (9th Cir. 2017) (emphasis in original). Although the Ninth Circuit ultimately deferred to the Copyright Office's interpretation of its statute, it disagreed that the plain meaning of the statute foreclosed an interpretation under which online services could be entitled to a statutory license.

[56] MDTC Opposition at 19-23.

[57] *See* 47 U.S.C. § 543(*l*)(1)(D).

telephone exchange service.[58] The Media Bureau's prior holding that LEC affiliates can satisfy the LEC Test by providing video programming through MMDS (rather than through the LEC's telephone facilities)[59] further undermines Respondents' position that the LEC Test can only be met in markets where the LEC also provides telephone exchange service.

None of the cases MDTC cites support its contention. MDTC points to a string of cases that happen to involve LEC video programming that were located in the relevant LECs' service areas.[60] Nothing in these decisions suggests that this is the *only* circumstance in which the LEC Test can be met. As Charter's Petition explains, neither the Media Bureau nor the Cable Services Bureau has spoken on this issue when ruling on petitions regarding LEC affiliates.[61] Nor did they have any reason to do so based on the facts presented to them.

For the purposes of the LEC Test, it does not matter where the relevant LEC provides telephone exchange service. What matters is whether a LEC or LEC affiliate is offering *video programming* service in the same franchise area as the incumbent cable operator.[62]

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[58] Where Congress intended to impose a geographic restriction on provisions applicable to LECs, it did so expressly. *See, e.g.*, 47 U.S.C. § 572(a) (prohibiting a LEC from acquiring certain interests in "any cable operator providing cable service *within the local exchange carrier's telephone service area*." (emphasis added)).

[59] *See* Pet. 13-15; *In re CoxCom, Inc. Petition for Determination of Effective Competition*, Order on Reconsideration, 15 FCC Rcd 728, 729-30 ¶ 3 (CSB 2000); *In re Time Warner Cable Petition for Determination of Effective Competition*, Memorandum Opinion and Order, 14 FCC Rcd 13,495, 13,495 ¶ 1 (CSB 1999).

[60] *See* MDTC Opposition at 21 & n.86.

[61] *See* Pet. 13-14 & n.54.

[62] As discussed in Charter's Petition, the Act defines "local exchange carrier" to mean any person "engaged in the provision of telephone exchange service or exchange access," 47 U.S.C. § 153(32), and "affiliate" to include any person "owned or controlled by" another, where "own" means an equity interest of more than 10 percent, 47 U.S.C. § 153(2). Neither of these definitions refer to geographical limitations, and DIRECTV is plainly a LEC affiliate under these definitions—regardless of whether or not AT&T operates its LEC service in the Franchise Areas. *See* Pet. 5-6.

III. There Is No Impediment to Offering DIRECTV NOW in the Franchise Areas.

MDTC's claim[63] that the need for broadband service creates a technical or other impediment to the provision of DIRECTV NOW can be rejected out of hand. MDTC's argument that a technical impediment may exist even when that service is actually available to consumers[64] is wholly inconsistent with the experience of consumers in the Franchise Areas who have *actually* subscribed to the service. In today's highly connected world, the fact that a consumer needs a broadband or wireless connection to receive DIRECTV NOW is not an impediment, technical or otherwise.

Although the LEC Test does not include any penetration requirement (or even any requirement that consumers actually purchase the service),[65] even a cursory look at the availability of broadband and DIRECTV NOW's subscription rate puts MDTC's argument to rest. Broadband service is highly penetrated and widely adopted, including in the Franchise Areas. Census Bureau data shows that 85.5% of households in Massachusetts and 83.2% of households in Hawaii had broadband internet subscriptions in 2016;[66] these numbers have almost certainly continued to rise. And, to date, nearly two million people subscribe to DIRECTV NOW.[67] In order to find that DIRECTV NOW faces an impediment and is not actually available, the Commission would have to adopt a legal fiction that is contrary to the actual experience of millions of consumers. As the Commission has explained, Congress intended "offer" to mean that a competing provider has made

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[63] MDTC Opposition at 16.

[64] *Id*. at 13.

[65] *1999 Implementation Order*, 14 FCC Rcd at 5302-03 ¶ 10.

[66] Camille Ryan, American Community Survey Reports, U.S. Census Bureau, "*Computer and Internet Use in the United States: 2016*," (issued Aug. 2017), https://www.census.gov/content/dam/Census/library/publications/2018/acs/ACS-39.pdf. *See generally Farah v. Esquire Magazine*, 736 F.3d 528, 534 (D.C. Cir. 2013) (judicial notice may be taken of publicly available information).

[67] *See supra* n.30.

its service widely available so that "the people will get a choice in how they get their services."[68] For consumers in Massachusetts and Hawaii, the vast majority of whom have access to high-speed broadband already,[69] DIRECTV NOW has provided such a choice.

In support of their arguments that there are impediments to consumer access to DIRECTV NOW, Massachusetts and Hawaii assert groundless concerns about Charter's purported control of internet access. Their claims ignore the availability of at least two alternative fixed broadband providers in the Franchise Areas.[70] In addition to fixed options, customers in the Franchise Areas can choose from at least four national mobile broadband providers serving Massachusetts and Hawaii, including AT&T,[71] that offer 4G mobile broadband speeds sufficient to view DIRECTV NOW.[72] Thus, customers in each state can choose broadband service from at least six providers, of which Charter is only one.

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[68] *1999 Implementation Order*, 14 FCC Rcd at 5302-03 ¶ 10 (quotation marks omitted).

[69] According to Commission data, 97.7% of the population in Massachusetts had access to fixed terrestrial 25 Mbps/3 Mbps broadband services as of December 2016, with availability in the Franchise Areas ranging from 86.3% to 98.3%. In Hawaii, 95.3% of the population had access to fixed terrestrial 25 Mbps/3 Mbps broadband services as of December 2016, with availability in the Franchise Area at 91.3%. *See In re Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2018 Broadband Deployment Report, 33 FCC Rcd 1660, Appendix F1 (2018).

[70] According to the FCC's Broadband Map, based on county-level data, all consumers in the Massachusetts Franchise Areas have access to at least 2 fixed broadband providers offering 25 Mbps/3 Mbps, and between 86.46% to 98.64% of consumers have access to at least 3 such providers. In Kauai, more than 90% of consumers have access to at least 2 providers offering 25 Mbps/3 Mbps speeds. *See* Federal Communications Commission, Broadband Map, https://broadbandmap.fcc.gov/#/ (last visited Nov. 18, 2018).

[71] *See* T-Mobile, "LTE Comparison Map," https://www.t-mobile.com/coverage/lte-comparison-map (showing that AT&T, Sprint, T-Mobile, and Verizon all offer 4G services in Hawaii and Massachusetts); AT&T, "Domestic Wireless Coverage Data," https://www.att.com/maps/wireless-coverage.html; Sprint, "Coverage Map," https://coverage.sprint.com/IMPACT.jsp?; Verizon, "Wireless Coverage Locator," https://www.verizonwireless.com/support/knowledge-base-16455/.

[72] *See* AT&T, *Internet Speed Suggestions for Optimal DIRECTV NOW Streaming*, https://www.att.com/esupport/article.html#!/directv-now/KM1227443?gsi=0kQDCHg (recommending speeds of 150 Kbps to 2.5 Mbps for standard-definition and 2.5 to 7.5 Mbps for high-definition quality) (last visited Nov. 18, 2018).

Moreover, as the Commission recognized in adopting the *Restoring Internet Freedom Order*,[73] internet service providers like Charter have strong incentives to preserve internet openness, and these interests outweigh any countervailing incentives a provider might have.[74] The Commission also noted that "there is scant evidence that end users . . . have been prevented by blocking or throttling from accessing the content of their choosing."[75] Consistent with the FCC's findings and Charter's stated policy, Charter does not block or throttle lawful content, including video programming, on its internet service.[76]

IV. Granting the Petition Will Best Advance Congress's Goals.

Granting the Petition will advance Congress's objective of promoting efficient and effective competition in the market for video programming services, by eliminating regulation where Congress has determined it is no longer necessary. The LEC Test is designed to avoid the distorting effects of burdensome, asymmetrical regulations in franchise areas where consumers have meaningful choices between competing services.[77] When consumers can choose between comparable video programming services, subjecting incumbent cable operators to rate regulation does not protect consumers or promote efficiency. That is particularly true when incumbent cable operators face competition from a LEC or LEC affiliates, who have abundant resources and technological capacity to compete with incumbents.[78] Consumers are disserved if the incumbent

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[73] *In re Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, 378-79 ¶ 117 (2018).

[74] *Id.*

[75] *Id.* at 468-69 ¶ 265.

[76] Spectrum, *Network Management Practices*, https://www.spectrum.com/policies/network-management-practices.html (last visited Nov. 18, 2018).

[77] *See* 47 U.S.C. § 543(*l*)(1)(D).

[78] *See supra* n.53.

cable operator in a competitive market is inhibited by unnecessary regulation in its ability to respond to its rivals with innovative pricing or service options.

Perhaps cognizant of the fact that it could not perfectly predict the future, Congress's broad statement that a service could satisfy the LEC Test "by any means" created space for a wide array of both established and emerging LEC video offerings that could satisfy the LEC Test. Today, as Charter explained in its Petition,[79] there is no doubt that online video programming services can and do compete with incumbent cable operators. DIRECTV NOW offers consumers access to live television, cloud DVR, and (in most areas) local broadcast channels;[80] and its video programming service has already impacted the market considerably.[81] Ironically, given Respondents' misguided insistence on a facilities requirement for the LEC Test, the very reason that DIRECTV NOW can compete so effectively is that it did *not* have to build its own facilities or meet the same array of local, state, and Federal requirements applicable to cable operators. Respondents' position that this type of service can never be a true competitor to cable ignores market realities that the Commission itself has readily acknowledged.[82] As the Media Bureau noted in 2017, "[t]he most significant change in the status of competition in the market for the delivery of video services has been the introduction of Sling TV by DISH Network and DIRECTV NOW by AT&T."[83]

MDTC claims that granting Charter's Petition will discourage providers from investing in facilities by sending "a message" that "using a competitor's broadband facilities for provision of

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[79] Pet. at 3.

[80] *Id.* at 3-4.

[81] *See* Frankel, *supra* n.30.

[82] *2017 Video Competition Report*, 32 FCC Rcd at 571 ¶ 8 (MB 2017).

[83] *Id.*

their content rather than expanding their own is good enough for the Commission."[84] But the application of the LEC Test to DIRECTV NOW carries no such weight. In this respect as in its other arguments, MDTC imputes a facilities requirement to the LEC Test where Congress has not imposed one. Granting the Petition will simply affirm Congress's determination that the LEC Test can be satisfied "by any means," without conveying any broader "message" about facilities-based competition.[85]

MDTC's argument that granting the Petition would result in "regulation of the Internet" is likewise groundless. MDTC assumes, wrongly, that granting the Petition would necessarily subject AT&T and DIRECTV NOW to regulation as a cable operator or other MVPD.[86] As demonstrated above, however, a LEC or LEC affiliate need not be an MVPD to satisfy the broad language of the LEC Test, and this fact undermines MDTC's claim.

V. The Request for Discovery and an Evidentiary Hearing Should Be Denied.

Finally, the Commission should deny the Massachusetts AG's requests for discovery, an evidentiary hearing, and/or an order referring the Petition to an administrative law judge.[87] None of these procedural steps are necessary to resolve Charter's Petition, and denying them is well-within the Commission's discretion.[88]

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[84] *See* MDTC Opposition at 25-26.

[85] If anything, competitors would arguably have an incentive *not* to invest in facilities-based video programming if they knew they could saddle incumbent cable operators with outmoded rate regulation by refraining from offering any facilities-based service while offering online video programming service in a franchise area. Creating such a perverse incentive would imperil the LEC Test's ultimate goal of promoting fair and effective competition.

[86] *See* MDTC Opposition at 26-27.

[87] *See* Massachusetts AG Opposition at 3.

[88] *Sprint Comm'ns Co. v. FCC*, 76 F.3d 1221, 1231 (D.C. Cir. 1996) (Commission's decision to deny discovery and evidentiary hearing is "committed to agency discretion by law") (quoting 5 U.S.C. § 701(a)(2) and citing *Webster v. Doe*, 486 U.S. 592 (1988); *Heckler v. Chaney*, 470 U.S. 821 (1985)); *see also EDF Res. Capital, Inc. v. U.S. Small Bus. Admin.*, 910 F. Supp. 2d 280, 286 (D.D.C. 2012) (in determining whether discovery was warranted, district court "may not substitute its judgment for that of the decision-making agency"). *See generally*

All of the material facts regarding DIRECTV NOW's relationship to AT&T, the nature of the DIRECTV NOW service and its features, and the availability of broadband and wireless service in Massachusetts and Hawaii are established by the undisputed evidence in the record of this proceeding and in the public record. The only task that remains is interpreting the LEC Test as a matter of law, so that it may be applied to the undisputed facts. The proposed discovery requests regarding the pricing and speeds of Charter's broadband service are irrelevant to this proceeding in light of the undisputed broadband penetration and the alternatives available in both states. The Massachusetts AG's requests—which seek information that is irrelevant to the question of statutory interpretation at hand—are a transparent attempt to delay this proceeding and turn it into a broader inquiry regarding Charter. The Commission should exercise its discretion not to entertain such needless requests.[89]

Because only pure questions of law remain, prolonging this proceeding by imposing superfluous procedural hurdles would only waste the time and resources of the parties and the Commission.[90]

CONCLUSION

For the foregoing reasons and those in Charter's opening submission, the Petition for Effective Competition should be granted.

In re Implementation of the Telecommunications Act of 1996, 12 FCC Rcd 22,497 (1997) (stating that, unlike federal courts, the Commission need not provide discovery as a matter of right).

[89] *See, e.g.*, *Sprint Comm'ns Co.*, 76 F.3d at 1231 (affirming the Commission's decision not to conduct discovery or evidentiary hearing); *Baltimore v. Clinton*, 900 F. Supp. 2d 21, 30 (D.D.C. 2012) (affirming agency's decision not to allow discovery of evidence that was not relevant to its determination).

[90] *See Foretich v. Chung*, No. CIV.A.91-0123HHG/PJA, 1994 WL 716606, at *2 (D.D.C. Oct. 3, 1994) ("It simply makes no sense to waste the Court's limited resources, as well as those of the litigants, by continuing discovery, unless it can be shown that discovery might bear fruit"); *Simpson v. Spencer*, 372 F. Supp. 2d 140, 149 (D. Mass. 2005) (noting that, "[u]nder the federal rule, the trial judge may exclude relevant evidence simply because it wastes time").

Undersigned counsel have read the foregoing Reply, and to the best of their knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and is not interposed for any improper purpose.

Respectfully submitted,

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November 19, 2018

APPENDIX A

Massachusetts Communities:		PSID
Dalton, MA	MA0027	003051
Lee, MA	MA0009	
Lenox, MA	MA0010	
Pittsfield, MA	MA0028	
Richmond, MA	MA0096	
Stockbridge, MA	MA0011	
Auburn, MA	MA0073	003621
Brookfield, MA	MA0335	
Charlton, MA	MA0309	
Dudley, MA	MA0036	
East Brookfield, MA	MA0312	
Harvard, MA	MA0334	
Holden, MA	MA0179	
Paxton, MA	MA0304	
Pepperell, MA	MA0281	
Spencer, MA	MA0043	
Sturbridge, MA	MA0209	
Upton, MA	MA0242	
Uxbridge, MA	MA0290	
West Boylston, MA	MA0319	
West Brookfield, MA	MA0305	
Worcester, MA	MA0018	
Belchertown, MA	MA0286	007064
Brimfield, MA	MA0339	
Chicopee, MA	MA0087	
East Longmeadow, MA	MA0092	
Easthampton, MA	MA0107	
Hadley, MA	MA0285	
Hampden, MA	MA0103	
Ludlow, MA	MA0081	
Southampton, MA	MA0184	
Wilbraham, MA	MA0054	

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

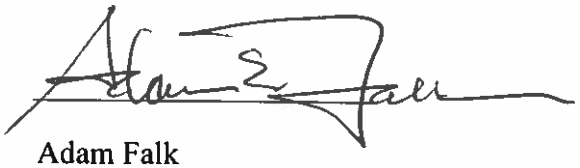
In the Matter of Petition for Determination of Effective Competition in 32 Massachusetts Communities and Kauai, HI (HI0011)	)	MB 18-283 CSR-8965-E

DECLARATION OF ADAM FALK

I, Adam Falk, hereby declare under penalty of perjury the following:

1. I am Senior Vice President, State Government Affairs at Charter Communications, Inc., and I am responsible for overseeing state and local government relations activities, including all legislative and regulatory affairs, community engagement activities and franchising across Charter's 41-state service area.

2. I have read the foregoing Reply to Oppositions ("Reply"). With respect to statements made in the Reply, other than those of which official notice can be taken, the facts contained therein are true and correct to the best of my personal knowledge, information and belief.



Adam Falk
Senior Vice President, State Government Affairs
Charter Communications, Inc.

Date: November 19, 2018

CERTIFICATE OF SERVICE

I, Christine N. Sanquist, hereby certify that on this 19th day of November, 2018, a copy of the foregoing REPLY TO OPPOSITIONS was filed electronically with the Commission by using the ECFS system and that a copy of the foregoing was served by first-class mail, postage prepaid to the following:

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